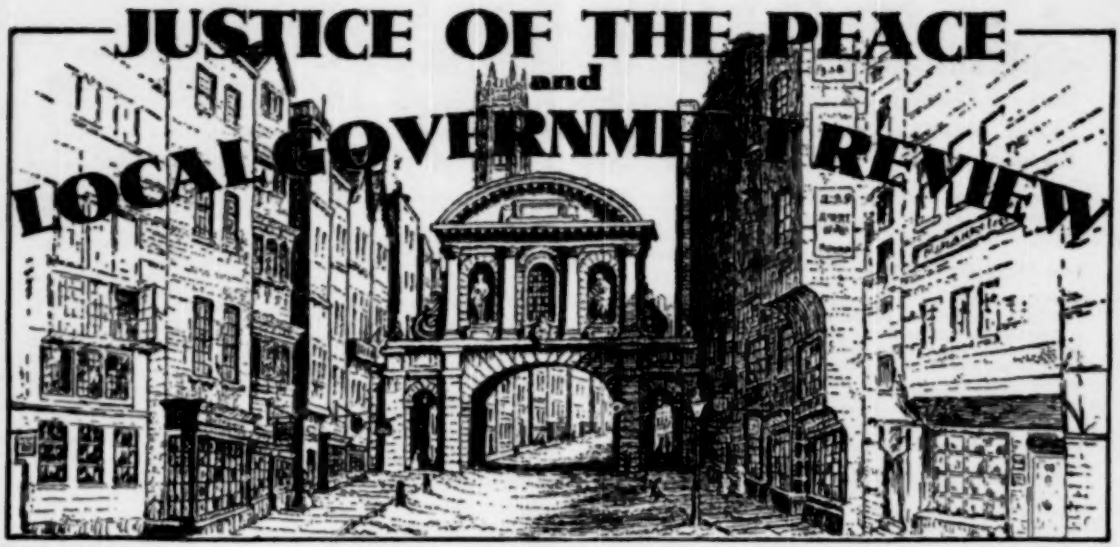

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Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

METROPOLITAN BOROUGH OF SOUTHWARK

Town Clerk's Department—Assistant Solicitor

APPLICATIONS are invited from suitably qualified and experienced persons for the post of Assistant Solicitor on the permanent establishment of the Town Clerk's Department, at a salary in accordance with Grade A.P.T. VII or Grade A.P.T. VIII of the National Joint Council Scales according to experience, *i.e.*, £665—£740 per annum or £715—£790 per annum, less £10 if under 26 years. Local government experience is desirable but not essential.

The appointment is subject to the Council's Conditions of Service, to the provisions of the Shoreditch and Other Metropolitan Borough Councils (Superannuation) Acts, 1922-37, to the passing of a medical examination and to one month's notice on either side.

Application forms are obtainable from me and must be returned not later than noon on June 5, 1950.

The Council is not in a position to assist in the provision of housing accommodation.

Canvassing in any form will disqualify.

D. T. GRIFFITHS,
Town Clerk.

Southwark Town Hall,
Walworth Road, S.E.17.
April 26, 1950.

CITY OF LIVERPOOL

Appointment of Deputy Principal Probation Officer

APPLICATIONS are invited from Probation Officers for the appointment of Deputy Principal Probation Officer. The salary in the case of a man will be on the scale £575 × £20—£675 per annum, or, in the case of a woman, £475 × £15—£550 per annum. The appointment will be subject to the Probation Rules, 1949, and the successful candidate will be required to undergo a medical examination.

Forms of application, which must be returned not later than May 27, will be sent to intending applicants on receipt of a stamped and addressed envelope.

H. A. G. LANGTON,
Clerk to the Justices.

City Magistrates' Courts,
Dale Street,
Liverpool, 2 (2292).

THE LANCASHIRE (NO. 1) COMBINED PROBATION AREA

Female Probation Officer

APPLICATIONS are invited for the above whole-time appointment. The area comprises the County Borough of Barrow-in-Furness and the Petty Sessional Divisions of Lonsdale North of the Sands and Hawkshead. Applicants must be not less than 23 and under the age of 40 years, except in the case of serving whole-time probation officers or persons who have satisfactorily completed an approved course of training.

The appointment and salary will be subject to and in accordance with the Probation Rules, 1949, and an allowance of £100 per annum in connexion with the use of the officer's own car will be paid. The post is superannuable and the successful applicant will be required to pass a medical examination.

Applications, stating age, qualifications and experience, together with copies of three recent testimonials, must reach the undersigned not later than May 31, 1950.

JOSEPH WILLS,
Clerk of the Combined Area Committee.

Magistrates' Clerk's Office,
Market Street,
Barrow-in-Furness.

INQUIRIES

COUNTY BOROUGH OF DUDLEY

Appointment of Whole-time Clerk to the Justices

APPLICATIONS are invited for the appointment of whole-time Clerk to the Justices for the above County Borough. Applicants must be Solicitors or Barristers preferably with experience of the duties of such an appointment.

The salary will be at the rate of £1,150 a year rising by annual increments of £50 to £1,250 a year. Office accommodation, staff, books, etc., are provided. The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a Medical Examination.

Applications stating age, present appointment, qualifications and experience, together with copies of two recent testimonials, should reach the undersigned not later than May 20, 1950.

T. T. CROPPER,
Clerk to the Justices.

Town Hall,
Dudley,
Worcs.

NEW FOREST RURAL DISTRICT COUNCIL

Legal Assistant

APPLICATIONS are invited for this appointment at a salary within Grades A.P.T. III and IV. The person appointed must have Conveyancing and Common Law experience, but will be required to undertake administrative duties as well.

Housing accommodation within the Council's area will be offered to the successful candidate, but no guarantee is given as to whether it will be a house or a flat.

Applicants should state, amongst other things, the earliest date upon which they could take up the appointment. Testimonials are not required, but the names of two referees should be sent, and applications must be in my hands not later than May 13.

A. E. N. ASHFORD,
Clerk to the Council.

Council Offices,
Lyndhurst,
Hants.
April 28, 1950.

PUBLIC NOTICE

ROAD TRAFFIC LAWS AND THEIR ADMINISTRATION

ADDRESS by Prof. A. L. Goodhart, K.B.E., K.C. Caxton Hall, Westminster, Tuesday, May 9, 6.30 *p.m.* Chairman: Viscount Maugham. Admission Free. Pedestrians' Association.

SITUATION VACANT

SUSSEX solicitor (part-time Clerk to Justices) requires a Clerk (Shorthand and Typing) with experience of magisterial work an advantage or willing to learn. Salary by arrangement according to experience. Applications, with copy testimonials, to Box No. B12, Office of this paper.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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NOTES of the WEEK

Instruction for Magistrates

The report of the clerk to the justices for the county borough of Southend-on-Sea and the Petty Sessional Division of Rochford, provides gratifying evidence of the growing keenness among magistrates to master their work. Mr. Homfray Cooper states that during 1949 there were fifteen new appointments to the commission, a welcome addition, which owing to their desire to learn their duties resulted in many calls upon his time and that of his staff. The new appointments afforded an excellent opportunity for providing instruction. A course was arranged; there was a monthly discussion group; explanatory talks were given covering different spheres of magisterial work followed by discussion. In addition, there was a well attended meeting arranged in conjunction with the Magistrates' Association.

The table showing the attendances of each justice as a member of a court is further proof of their readiness to give up time to their work. The volume of work shows a decrease in two important respects; there were fewer charges in the juvenile court than in the previous year and matrimonial work also decreased.

There was much new law to be learned. It is pointed out that during 1949 no fewer than twenty-six new statutes were passed which affect the work of the magistrates' courts, some of them of major importance. Mr. Cooper complains, and he is certainly not alone in this, of the fact that some of these statutes were brought into force so quickly that there was little time for the preparation of forms or for study of new provisions. In one case the Act was in force for some weeks before copies were generally available.

Enforcing Parental Responsibility

In the House of Lords' debate on crimes of violence on March 23 (Lords *Hansard*, col. 516) the Lord Chancellor referred amongst other things to s. 55 of the Children and Young Persons Act, 1933. That section provides that if the court decides to impose a fine, damages, or costs for an offence committed by a child or young person then, unless the parent or guardian is undiscoverable or the court are satisfied that the parent or guardian has not conduced to the commission of the offence by neglecting to exercise due care, the court in the case of a child must, and in the case of a young person may, order the parent or guardian to pay. That same section also provides that in the case of a child or young person charged with any offence the court may order his parent or guardian to give security for his good behaviour. The power to order a parent or guardian to give security for the good behaviour of the child is freely exercised by the London juvenile courts, and the Lord Chancellor stated that these courts also, to some extent, use their power to order the parent to pay damages or costs. Lord Salisbury questioned whether these powers of the court are widely enough known, and suggested that steps should be taken to circulate information about them. Lord Samuel, with proper parental pride (not, be it said, as a father of juvenile delinquents, but as a former Under Secretary of State who had a large share in piloting the Children Act, 1908, through the House of Commons) interjected that the power had been on the statute book for more than forty years. This is true : it originated in s. 99 of the Act of 1908, but the suggestion that the power is insufficiently realized receives some support from what the Archbishop of York said at col. 41 in the same debate, quoting from the *Manchester Guardian*, a suggestion made by the Warrington and District Schoolmasters' Association. This runs :

"If the parent is primarily to blame for his child committing a crime, then it is the parent who should compulsorily appear in the juvenile court, side by side with his child, the parent who should pay for damage to property, the parent who should be placed on probation."

This, said the Archbishop, may be rather a drastic suggestion—which seems to indicate that his Grace, the Warrington schoolmasters, and the *Manchester Guardian*, were all subject to Lord Samuel's strictures as being forty years behind the times. The Lord Chancellor did not altogether agree that the powers were not known, and he deprecated the issue of a circular from the Home Office to magistrates, lest it might be thought that the Home Office was dictating to them. He preferred to rely upon the press to notice the debate; and to remind magistrates, in case any of them do not know, that there are these powers in the Act of 1933, and that it had been suggested in the House that more use might be made of them. It is important to bring home to parents not merely their moral responsibility but their potential legal liability for offences committed by their children.

Probation in Lincoln

In their report for the year 1949, the probation officers for the City of Lincoln refer appreciatively to the provisions of the Criminal Justice Act relating to probation which, together with the new Probation Rules, they think will provide for a first-class probation service. They add that the justices have been quick to recognize this, and have made every effort to provide all necessary accommodation and equipment. Further improvement is anticipated as the result of the constitution of the whole county of Lincolnshire as a combined area.

As to matrimonial work, the officers have to report that in spite of much time and effort devoted to attempts to effect reconciliation between parties, there is an ever-increasing number of cases where reconciliation cannot be effected. They go on to discuss some of the causes of the breakdown of marriages, causes with which most of us are only too familiar. It is well that when the position as to reconciliation is not alto-

gether encouraging it should be stated plainly and frankly. The responsibility of parents is less and less recognized by them, and the report quotes, as the most flagrant example, the case of a man who "casually asked that his seven children be accommodated."

To remove misconceptions which still prevail as to probation being a mere let off or some form of police supervision, the probation officers have made use of opportunities of addressing meetings on the subject, and have been rewarded by the interest and appreciation shown by their audiences. They have also been encouraged by the co-operation of medical officers and their staffs, by other medical practitioners, by officials of the employment exchange and by the police. It has also been gratifying to find employers in the City so often willing to give a chance to probationers. When people really understand what sound probation work stands for, they are generally willing to help, and there is no doubt about the general improvement in the relations between probation officers and various officials, which enables the probation officers to work far more effectively than they could if such sympathy and understanding were not forthcoming.

Birmingham Marriage Guidance Council

When marriage councils were first established, they were regarded by many people with some distrust. This was not unnatural, because if they had been allowed to get into the hands of cranks, they might easily have done much more harm than good. However, this has not happened, and from what we have read and heard we are quite prepared to believe that they are being conducted on sound, wholesome principles. They have been spoken of with approval by high judicial authority and have been found useful by probation officers and other social workers and are evidently working in close co-operation with other bodies, official and unofficial.

We have received the report for the year 1949 for the Birmingham Marriage Guidance Council, from which it is clear that in that progressive city good work is being done. Although the council cannot yet undertake all the work it would like to do, its financial position has improved so much that encouraging developments are now in progress.

It is emphasized that the work is conducted on strictly confidential lines and that any temptation to enlist public support by quoting striking instances of success has been constantly resisted. This is a wise policy, because the matters dealt with are often delicate and intimate, and only if people are assured that nothing will ever be divulged will they be ready to accept the help of the council. Equally important is the recognition that nothing can be done where one party to the marriage is determined not to accept help or mediation.

As in other fields of work, so in marriage guidance, it is the failures that gain publicity. Husband and wife whose difficulties are straightened out are not heard of, but those who ultimately resort to the courts and happen to mention that at one stage they sought advice from a marriage guidance council are almost sure to be quoted as an instance of the failure of such work. The report states, however, that it is by no means uncommon for those who have been helped to show their gratitude and to keep in touch to some extent with those whom they have learned to regard as friends. This is particularly true of young couples who have asked for advice in preparation for marriage, and it is noteworthy that the number of applications for this kind of advice is increasing.

The report acknowledges the invaluable help it has received from members of the medical and legal professions, as well as from ministers of religion, in dealing with cases of marital disharmony. The co-operation of the Law Society and the Poor Man's Lawyer Association is also acknowledged.

Importance is attached to lectures, of which thirty-five have been given during the year. It is felt that with increased financial support this branch of the work could usefully be extended.

Noting-up Statutes

We called attention at 111 J.P.N. 718 to the new enterprise, as it then was, of the issue from H.M. Stationery Office of a noter-up for the statutes as they were affected by those passed in 1946. Beginning in that way, it was manifestly impossible to complete and issue a noter-up for alterations made in previous years, but the annual issue has continued up to 1949: that is to say, so as to comprise amendments made by the Acts, statutory instruments, and Church Assembly Measures of 1948, in the Statutes Revised up to 1920, and in the annual volumes of the official edition of the statutes since that date. We understand that the noter-up dated 1950, which would have been issued about this time of year, carrying the process up to the end of 1949, is being held back, so as to appear at the same time as the third edition of the *Statutes Revised*, which will be completed up to the end of 1948 and available, it is hoped, before the end of 1950. These officially prepared editions, with noters-up, can obviously not take the place for all purposes of *Halsbury's Statutes*, which supply further and better particulars of the statute law, but in their own sphere (that is, as an up-to-date official publication) they are a welcome innovation. In connexion with these annual noters-up, officially issued, we have been interested to come across a footnote at p. 674 of vol. 16 of the *Statutes Revised* published in 1900, which took the statute law then in force up to the end of 1886: this note, to the corrigenda appended to that volume, adopts the same plan for corrections as the series of noters-up now being issued adopts for amendments.

Cab Fares by Time

The control of hackney carriages continues to throw up odd little points of practice; this is hardly surprising when local authorities have the choice of either administering law which has not been revised for a hundred years or letting it remain unadministered—the latter plan being, on the whole, followed in most areas with general satisfaction to the public as well as to the cab trade. The latest point to be brought to our notice is how to deal with charges for weddings, funerals, and similar occasions when the normal cab fare may not compensate the proprietor and driver, if the vehicle used is a hackney carriage and a table of fares for hackney carriages has been put in force by the local authority. If the vehicle is not a hackney carriage, no question arises, but, assuming hackney carriages to be hired out for these festivities, some local authorities have been wondering whether they ought to include some special fees in their tables of fares, whilst others have raised the question whether the vehicle hired remains a hackney carriage to which the byelaws, and the table of fares, apply. In *Hawkins* v. *Edwards* (1901) 65 J.P. 423, it was held that a vehicle, which was ordinarily used to solicit custom in the streets and was properly licensed accordingly as a hackney carriage, did not lose that character when hired for a special purpose on a particular occasion at the proprietor's stable instead of in the street, and therefore that, a byelaw having been made under s. 68 of the Town Police Clauses Act, 1847, prescribing the manner of displaying the number mentioned in that section, it was an offence to cover the number while the vehicle was passing through the streets on that occasion. From this it follows that a vehicle licensed as a hackney carriage, which is hired at its garage for a particular occasion, would still fall

within ss. 55 and 58 of the Act of 1847. Those sections, however, operate expressly by reference to byelaws (if any) made under s. 68 for fixing fares. The solution of the difficulty stated above, of hirings for weddings and funerals, is therefore to be found in suitable wording of the byelaws fixing fares. Such byelaws can by s. 68 be made for the purpose, *inter alia*, of fixing the rates or fares "as well for time as distance," but at the present day, in view of the difficulty of fixing reasonable fares for time, most local authorities fix fares for distance only, leaving fares for time uncontrolled, and so open to be privately arranged between the parties. In practice, this means that a proprietor is at liberty (unless his cab is standing at a stand or in a street—s. 53 of the Act of 1847) to refuse a hiring by distance for which he thinks the prescribed rates are inadequate, and on being asked to undertake the hiring on a time basis may bargain with the prospective customer. It is true that, if the vehicle is on a stand or standing in the street, the driver cannot refuse to be hired by distance, but the tendency today is undoubtedly to work from garages, where the men and vehicles are under cover, and can, in the smaller towns, easily be reached, a practice which also has the merit of leaving free, for traffic or for parking places under s. 68 of the Public Health Act, 1925, the space used formerly for stands. The omission of time hirings from the byelaws with respect to fares can, therefore, do no harm, and for weddings, funerals, and similar occasions, hirings by time may well be preferred on both sides.

THE CRIMINAL JUSTICE ACT, 1948

["PERSISTENT OFFENDERS" AND "INDICTABLE OFFENCES PUNISHABLE ON SUMMARY CONVICTION"]

By H. A. H. WALTER, M.A. (Cantab.), *Deputy Clerk of the Peace, Lincolnshire (Holland)*

During 1949 the Court of Criminal Appeal answered some of the questions which perplexed those responsible for the administration of ss. 21, 22, 23 and 29 of the Criminal Justice Act, 1948; perhaps in time we shall have authoritative answers to some of the many remaining questions. Seldom can there have been so many decisions on a few sections of a statute within a few months of their coming into operation; this is not surprising when one considers the complexities of the Act. In a recent letter to the *Daily Telegraph* on the subject of corporal punishment the learned Recorder of Gloucester wrote that "the Criminal Justice Act, 1948, is a 'best seller' in the criminal classes and more than one criminal has had it in his pocket when arrested." We may assume that these amateur lawyers will be quick to take advantage of our mistakes. *Judex damnatur cum nocens absolvitur*. It is therefore the duty of those responsible for advising the courts to prevent, as far as possible, the making of avoidable mistakes. It is proposed first to examine some of the important decisions of the Court of Criminal Appeal.

In *R.* v. *Allen* [1949] 2 All E.R. 808, *R.* v. *Browes* [1949] 2 All E.R. 449 and *R.* v. *Dickson* [1949] 2 All E.R. 810, the Court of Criminal Appeal drew attention to the absolute necessity for compliance with the prescribed procedure under s. 23 of the Act before the Court may sentence a prisoner to corrective training or preventive detention, and in *R.* v. *Dickson* the Lord Chief Justice gave a most helpful résumé of the proper procedure to be adopted by all courts concerning proof under s. 23.

The Lord Chief Justice, in *R.* v. *Dickson*, also stated that where notice has been served on the prisoner under s. 23, of intention to prove previous convictions or sentences it is desirable to insert an averment in the indictment in the form suggested by the judges in *R.* v. *Allen*, or that the notice to be served on the prisoner should be attached to the indictment. Either course will serve to remind the court of the requirements of the section.

In *R.* v. *Apicella* [1949] 2 All E.R. 813, the Court of Criminal Appeal decided that although the statutory conditions for preventive detention or corrective training are fulfilled and the Prison Commissioners find no reason why a particular form of sentence should not be passed, the sentence is not automatic; it must depend upon the view of the Court upon all the facts of the case. Birkett, J., made some helpful observations on the purpose of corrective training which the Court considered to be in some degree an extension of the principles underlying borstal treatment, while in *R.* v. *Askew* [1949] 2 All E.R. 687, the Court reviewed the purpose of preventive detention. Lord Goddard, C.J., pointed out that this sentence is appropriate for habitual criminals but not for those who have tried in recent years to reform themselves after a previous bad record. The purpose of preventive detention is to protect the public for a longer period than the court would feel justified in imposing if it were merely sentencing the offender to imprisonment. Preventive detention is not proper where the appropriate sentence would be four or five years' imprisonment: *R.* v. *Barrett* [1949] 2 All E.R. 689.

Another important case was *R.* v. *Speakman* [1949] 2 All E.R. 807; 113 J.P. 546, which clarified a point under s. 22 of the Act. Section 22 provides that where a person is convicted on indictment of an offence punishable with imprisonment for a term of two years or more and that person has been previously sentenced as stated in the section, the Court, if it sentences him to a term of imprisonment of twelve months or more shall, unless there are special circumstances, order that he shall for twelve months from his next discharge from prison be subject to the provisions of the section. He is required to keep "the appointed society" informed of his address. The Lord Chief Justice ruled that an order under s. 22 is inappropriate when a sentence of corrective training or preventive detention has been passed, because the special provisions of sch. III automatically apply on the release on licence of persons so sentenced. In *R.* v. *Keeler* [1949] 2 All E.R. 805, the Court of Criminal Appeal decided that "special reasons" for refraining from making an order under s. 22 must be stated but those reasons may be special to the offender as distinct from the offence, in this way differing from special reasons for not disqualifying a driver under s. 15 of the Road Traffic Act, 1930.

It should be noted that only previous convictions in Great Britain may be proved for preventive detention or corrective training. A previous conviction in Northern Ireland must, therefore, be disregarded: *R.* v. *Murphy* [1949] 2 All E.R. 867. Quarter sessions may not, under s. 29, sentence a person convicted at petty sessions for an indictable offence triable summarily if that offence is not triable on indictment at quarter sessions: *R.* v. *Middlesex Quarter Sessions—ex parte Director of Public Prosecutions*, *see* p. 210 *ante*.

Turning now to the unsolved problems, let us first examine another point under s. 22. What exactly constitutes "a term of imprisonment of twelve months or more"? Must the term be a single sentence or must two or more consecutive sentences each of less than twelve months be aggregated to decide whether,

if they together total twelve months or more, an order must be made applying the provisions of the section? There is no logical reason for distinguishing a single sentence of say, two years' imprisonment, from four consecutive sentences of six months each on four counts of an indictment. It is probable, but by no means certain, that an order may only be made if a single sentence is of the prescribed duration. It is not clear that an order under s. 22 should specify the appointed society (*i.e.*, the Central After-Care Association). It may be that an order may be in general terms to the effect that s. 22 shall apply.

Section 29 of the Act poses some difficult problems. A man with a bad record may consent to be tried summarily for an indictable offence in the hope of avoiding a long term of imprisonment, but he is then in danger of being sent to quarter sessions for a sentence of the same severity as if he had been tried on indictment, but without the safeguard of trial by jury. An "old lag" will be most unwise to risk summary trial if he intends to deny guilt. Section 29 also appears to ignore the right of appeal against *conviction* at petty sessions. A prisoner may consent to summary trial, be convicted and committed in custody for sentence at the next available sitting of a court consisting of members of the quarter sessions appeal committee. That court may sentence him before the expiration of the fourteen days within which he may appeal to the appeal committee against the conviction. If, after being sentenced, he does so appeal the committee may allow the appeal, but have the committee power to quash the sentence already passed by quarter sessions, or must the accused go to the Court of Criminal Appeal under s. 29 (3) (*d*) to get the sentence quashed? Incidentally the appellant against conviction can scarcely hope for a fair trial from a tribunal which has already sentenced him after hearing his criminal record.

Under r. 55 of the Summary Jurisdiction Rules, 1915, as amended by the Rules of 1948, the justices' clerk must send to the clerk of the peace the notes of evidence in cases committed under s. 29, but these are not depositions; they have not been read over to and signed by the witnesses. It is not clear what use quarter sessions may or should make of these notes nor is it difficult to envisage real or alleged injustice in the use of them.

A prisoner sent forward for sentence under s. 29 is to be treated for all purposes as if he had been convicted on indictment (*per* Lord Goddard, C.J., in *R.* v. *Browes*, *supra*). Presumably it will therefore be advisable, if not necessary, to "call upon" a convicted felon before sentencing him. The Act is silent on the point.

This Act has placed heavy new burdens on clerks to justices, clerks of assize, clerks of the peace and senior police officers. Other officials can help considerably by avoiding such blunders as putting the Prison Commissioners' recommendations about two or more prisoners on one sheet of paper with complete copies for every prisoner named thereon, so that all prisoners know what the Commissioners think of the others; a highly undesirable state of affairs.

INNKEEPER: STATUS OR CONTRACT?

[CONTRIBUTED]

The liability of one who pursues a public calling is recognized at Common Law, as it was at Roman Law, to be more stringent than that imposed upon an ordinary member of the public. The frequent appearance of the common carrier and the innkeeper, from the Year Books to the present day Law Reports, testifies to the law's recognition of the proposition that one who holds himself out as fulfilling a service to the public for remuneration shall not be allowed arbitrarily to refuse or withhold his services.

The medieval lawyer, striving to surmount the situation where a client without a writ was a client without a remedy, laid emphasis upon the public responsibility assumed by one who follows a public calling. It was with the common carrier, the innkeeper, the farrier and the smith that the march from status to contract in some measure began.

Proof that the Common Law is a living body adaptable to changing circumstances is to be found in the recent case of *R.* v. *Higgins* (1948) 112 J.P. 27. This was an appeal against a decision of the Essex Quarter Sessions. An innkeeper was convicted of a Common Law misdemeanour and fined £1. The indictment charged that an innkeeper refused to supply refreshment to a traveller contrary to the Common Law, and the particulars of the offence given were that on a certain date in April, 1947, he, being the keeper of an inn, without lawful excuse, refused to supply the prosecutor with refreshment for which he was willing to pay. The facts were that a traveller went with his wife to an inn and asked for lunch. The dining room was not full, but the vacant tables were reserved for customers who had booked them, for this reason the traveller and his wife were refused lunch. It was not disputed that at the time there was enough food in the inn for luncheon. The appellant was reserving some of the food he had in his house for the evening meal and for the next morning's breakfast. The appeal was on the grounds of a misdirection by the chairman of quarter sessions to the jury. Lord Goddard, C.J., delivering the judgment of the Court of Criminal Appeal (Lord Goddard, C.J., Humphreys and Singleton, JJ.), after stating the facts, said: "Now there is no doubt as to the obligation of an innkeeper. He is bound to supply a traveller with food and lodging which he cannot refuse without reasonable excuse. A reasonable excuse is a lawful excuse. What is a reasonable excuse is eminently a question for the jury, and, had this case merely left these facts to the jury with the direction that it was for them to find whether the excuse put forward by the defendant was one which in all the circumstances was reasonable, there would have been no ground for interfering with the conviction if the jury had seen fit to convict."

The standard then is, as it so often is, one of reasonableness. It was because the chairman directed the jury that the innkeeper's liability was an absolute one, qualified only by certain rigid exceptions which he enumerated as four, *viz.*, where the man is not a traveller; where the innkeeper has an absolutely full house; where the innkeeper has no food or is unable to procure food; to which, we may add, where the man is not prepared to pay for the food; that the conviction was quashed. The Court of Criminal Appeal however held that the excuse need only be reasonable in the wide sense, what conduct is reasonable in the circumstances being a question of fact for the jury to decide.

It may be that the duty of an innkeeper was once an absolute one as qualified by the exceptions we have noted. This was due to two reasons; first, the emphasis placed on the duty of those professing a public calling by the medieval lawyers, who hoped thus to find a remedy beyond the strict bounds of the writ of trespass *vi et armis*; and secondly, to the conditions which obtained in this country up to 100 years ago. In a thinly-populated countryside, where anyone embarking on a journey of

any distance was as dependent on the inn for rest, refreshment and protection as he was dependent on the stage-coach for transportation, it was not unreasonable to supervise the conduct of innkeepers rigorously. It is not surprising that for these reasons, which were valid for a long period in our history, a static standard of reasonableness became confused with an absolute duty. But the increasing facility of transport and communication spells a decreasing dependency on the wayside inn, and, as is clear from Lord Goddard's judgment, these changing social conditions have necessitated a re-examination of what may be a reasonable excuse for an innkeeper's refusal to accommodate intending guests.

Examples of the fluctuation of the Common Law in harmony with changing conditions are not so rife in a criminal law, which is to be found almost exclusively in the statute book, as they are in other branches of the law of England, but *R.* v. *Higgins* may take its place with *R.* v. *Manley* (1933) 97 J.P. 6 and *R.* v. *Semini* [1949] 33 Cr. App. R. 51, as an example of the constant revision and re-definition to which even Common Law crimes are subject.

A similar point fell to be decided in a civil case by His Honour Judge Walter Samuel in the Wellington County Court on March 21, 1950, when a traveller claimed £200 damages for injury to his health sustained by his being compelled to spend a night in his motor car owing to a licensee's refusal to accommodate him and his friend in an inn. There was, as found by the learned judge, a complete conflict of evidence concerning the conduct of the parties in the action. This much, however, is clear : on a day in June, 1948, the plaintiff and his friend arrived at the inn in the evening, having previously booked a room by telephone. They signed the register, had tea with bread and butter about which they complained, and then went for a walk, returning to the hotel long after closing time. When they returned a dispute arose between them and the licensee as a result of which they were asked to leave which they did under protest. The learned judge accepted the licensee's evidence that the conduct of his intended guests had been domineering and offensive, and dismissed the action with these words : " The law is perfectly clear that a licensee of an inn has a duty to provide refreshment and accommodation for travellers if he has it ; but once a guest registers the licensee is not absolutely bound to take him in if by reason of anything taking place on the premises the licensee considers himself justified because of the guest's behaviour, in not letting him go to the bedroom and telling him to leave."

It seems therefore that although the peculiar status of the innkeeper renders him unable, in the words of Lord Alverstone, C.J., in *Browne* v. *Brandt* [1902] 1 K.B. 696, to " pick and choose his guests," he will not be liable either under the criminal law or in damages for refusing to serve or accommodate intending guests, provided that his refusal was in the circumstances a reasonable refusal.

G.W.

REFORM OF LOCAL LEGISLATION

We spoke at p. 155 *ante* of consolidation of the law contained in public general statutes, with which progress is being made, and that contained in statutory rules and orders, the latter a task which is expected to be completed this year up to the end of 1948. For our own readers it is, or ought to be, not less an object of desire that the even bulkier and more intractable mass of local legislation should *mutatis mutandis* be similarly treated : consolidated for each town or other area to which it applies, as is being done for the country at large by the successive consolidation Acts, and pruned, after the manner of the Statute Law Revision Acts. We said just now that this ought to be a general desire in the local government world : but, alas, it is far from being so. If there had been any wish on the part of local authorities, generally, to make their local law intelligible and accessible, this could between the wars have been done for most towns instead of for a very few. Liverpool consolidated their local Acts in 1921 ; Brighton in 1923 ; Chesterfield in 1931 ; and Middlesex in 1944. The Public Health (London) Act, 1936, was a consolidating measure in the general law ; so was the London Government Act, 1939, but it cleared away a great deal of old local legislation. The London Building Act, 1930, was local legislation, and, being pure consolidation of law already obsolete, had to be partly modernized in 1935 and a good deal modified in 1939, so that (if it be granted that London building law must differ from that of other towns) fresh consolidation is desirable. Apart from the Acts just cited, all except Middlesex being from the period between the wars, we do not remember any large consolidation of local legislation since Birmingham, 1883. It is noteworthy that, when the Chesterfield and Brighton Acts were promoted, the late Mr. J. H. Rothwell was town clerk, of each town. One can see here no sign of general impulse towards reform in this field : quite the contrary. While reform of the general statutes is not opposed by any vested interest, or indeed by any force except *vis inertiae* and parsimony, and there is some body of opinion calling for reform, there is no body of opinion calling for reform of local statutes ; there is greater general inertia, because so much less is known to ordinary people about the present vicious position, and there are vested interests, strong in Parliament and in the press, hostile to reform. It would be easy for a dozen big towns, supported by the local government associations and the provincial newspapers, to mobilize (say) sixty members of the House of Commons to resist any attempt at depriving them of *privilegia* once conferred by Parliament.

For these reasons, we are not sanguine of seeing a move towards consolidating and reforming local statutes. Parliament has, on the other hand, been very chary of such provisions as s. 122 of the Road Traffic Act, 1930, by which the provisions of local Acts which overlap specified provisions of the general law are swept away. Section 313 of the Public Health Act, 1936, should be contrasted : the repeal is by order of a Minister, who cannot move except at the instance of the local authority. Section 32 of the Water Act, 1945, is a half-way house : repeal is by order of a Minister, which, if the local authority has not applied within five years, can be made *proprio motu*. If there is to be consolidating and reforming legislation in the local field either Parliament will have to make up its mind to follow the precedent of 1930 or at least that of 1945, or some different method will have to be devised. A great deal could obviously be done by order under s. 303 of the Public Health Act, 1875, this being one method of reducing cost, but we do not think cost is the main factor ; in fact we doubt whether any mere improvement of machinery would greatly help. The root of the evil is too deep. That there is this deep rooted evil is to our mind incontestable, although its magnitude is not realized by those who do not come into contact with it, and may be contested, possibly, by those who have grown used to it. At present, the position is that no person who wishes to acquire property in a provincial town can be certain that his solicitor can advise him what the law is. Some provisions involve

entries in the register of local land charges, but by no means all. Nor is property alone affected. The liberty of the subject differs from town to town: cp. *Leachinsky* v. *Christie* [1947] 1 All E.R. 567; 111 J.P. 224, decided on a Liverpool local Act. It is bad enough that the law as to arrest without a warrant (for example) should differ between the metropolitan police district and the rest of England; it is shocking that it should differ from one provincial town to another, according to the accident whether there exists local legislation framed in days before Parliament took note of this point. Indeed the differences do not depend only upon dates: in quite recent Acts there have been startling provisions. Section 47 of the National Assistance Act, 1948, dealing with persons who by reason of age and infirmity do not keep themselves clean, is causing a good deal of trouble, reflected in our Practical Points. This is now in the general law. It began life in local legislation, and after a time became standard clause 72. It embodies elaborate safeguards for proof before a magistrate; we are not here denying that a person in need of care and attention (to quote the marginal note to s. 47) deserves to be imprisoned for life (which in effect is what the section provides) but it cannot have been right that a man, who as such a person was not liable to be locked up at Blackacre, should be taken from his home at Whiteacre and locked up for successive periods of three months at a time, because Whiteacre had had occasion to promote a Bill for a new reservoir and had included standard clause 72 among various miscellaneous oddments desired by the medical officer of health and other local officials. Even solicitors in provincial towns are seldom well informed about the local Acts, and solicitors elsewhere have no practical means of discovering what the local Acts say except by asking the town clerk. Thus the local officials, especially technical officials like medical officers and surveyors, are put in a very strong position *vis-a-vis* the private citizen; this may well be the chief reason why nothing is done to improve the state of the law embodied in local legislation. It is also worth remembering that some of the local Act sections produce fees, legitimate or illegitimate, which go to the rate fund or sometimes into the pocket of the town clerk or clerk of the council. We are not speaking here of "graft," for which complex local legislation provides obvious openings, but of such a case as was brought to our notice by a correspondent who had to advise a client, a contractor who desired to erect a gantry. For this a licence was required by a local Act; the contractor was charged £160 for the licence although the Act did not authorize any fee at all. Our correspondent tells us that his client refused to fight, on the ground that he would get the money from the building owner, and did not wish to quarrel with the borough surveyor. This last may well be one reason why there is so little overt complaint. A further reason militating against reform is that a good part of the local Acts consists of provisions which afterwards found their way into the general law, and in the general law have been modernized. Ever since the Public Health Act, 1875, to go no further back, much of the legislation dealing with local government and public health began in the form of local Acts. This was periodically generalized, as in that Act, the Public Health Acts Amendment Act, 1890, the Public Health Acts Amendment Act, 1907, and the Public Health Act, 1925. When these generalized provisions were in turn partially consolidated as in the Local Government Act, 1933, and the Public Health Act, 1936, the local Acts were not touched. The result is that the local authority can use the general Act or the local Act as it finds most beneficial to itself—and the private person and his advisers can be kept guessing. The first, and better, course would be a statutory time limit on all local Acts—say five years for those passed up to 1900 and ten years for those of this century, coupled with facilities for re-enacting and consolidating live matter by ministerial order. For a precedent, compare s. 68 of the Public Health Act, 1936. A second course, nothing like so effective, would be to generalize s. 32 (2) of the Water Act, 1945, empowering a Minister to revoke, re-enact, and/or consolidate, local Acts, on application during (say) five or ten years, and thereafter *proprio motu*. Either course should be easier than it would have been till recently, because the Statutory Orders (Special Procedure) Act, 1945, could if desired be applied, so as to ensure parliamentary control. If the second course were adopted, it would probably be best entrusted to the Lord Chancellor's Department, in order to emphasize the link with reform of the public general statutes. Already there has been one hopeful indication of such linking; one practical matter connected with local legislation to which the Government have given attention concurrently with their programme of consolidation and statute law revision in the general law. When the second world war ended, there had been no consolidated index of the local legislation of the present century, so that the practitioner desirous of knowing what local legislation was in force in a particular town had to look at an index nearly fifty years old, and then at the annual indexes of nearly fifty volumes of the statutes. And even then he would not know, because local Acts are all the time being affected, not merely by fresh local Acts, but by other methods. Not only were there provisional orders under s. 303 of the Public Health Act, 1875, which would be picked up by the searcher in the indexes, because they were confirmed by Parliament, but there are other possible forms of ministerial order, *e.g.*, under s. 3 of the Public Health Acts Amendment Act, 1907; s. 6 of the Public Health Act, 1925, or s. 313 of the Public Health Act, 1936, and, now, the orders under s. 303 of the Act of 1875 which have ceased to be provisional: see *ante* p. 42 and 113 J.P.N. 579. Nor should one forget county review orders made under the Local Government Act, 1929, or the Local Government Act, 1933. These review orders frequently extended the area of operation of a local Act, while some of them have abolished the local authorities who obtained the local Acts, thus making previous index entries misleading, while applying the Acts to newly constituted areas. As a first step towards a complete and reliable index there is, however, now available the official index of local and personal Acts, completed to the end of 1947. For reasons we have just indicated, it is very far indeed from being an exhaustive guide; indeed, the official preface admits this. And we have one minor grumble; why give citations by the regnal year alone? In the official index to the public general statutes calendar years as well are given: since the calendar year has for many years been included in the statutory formula for citation of the Act, and nobody outside the ranks of professional indexers can remember regnal years without an effort, why not let us have both? Still, this new index is a valuable step forward. A next step might usefully be legislation requiring each local authority to prepare a statement of all its own Acts, whether repealed or not: to this should be added a statement showing which had been wholly repealed and a schedule of the Acts wholly or partly in force, with sectional references showing amendments and repeals, so as to pick up amendments and repeals made otherwise than by statute. The statement should be printed and copies made available for the use of the public. Section 70 (1) (*c*) of the Public Health Act, 1936, is a precedent on a limited scale for the requirement we are suggesting. The suggested statement would form a guide for the local authority itself, which sometimes does not know its own local Act powers, and would enable the private citizen to have a knowledge of the local law, particularly with the sectional references of the Acts shown. Even so, indexes however complete and up to date can never be a true substitute for consolidation: still less, for revision and reform.

WEEKLY NOTES OF CASES

KING'S BENCH DIVISION

(Before Lord Goddard, C.J., Morris and Finnemore, JJ.)

PYBURN v. HUDSON

April 19, 1950

Criminal Law—Vagrancy—Suspected person—Antecedent acts—Prisoner seen at back of premises—Prisoner subsequently seen on scaffolding intending to commit felony—Vagrancy Act, 1824 (4 *Geo.* 4, *c.* 83), *s.* 4.

CASE STATED by Sunderland justices.

At a court of summary jurisdiction at Sunderland an information was preferred by the appellant, John Leybourne Pyburn, a police officer, charging the respondent, Robert Hudson, with being a suspected person loitering with intent to commit a felony, contrary to s. 4 of the Vagrancy Act, 1824. At five minutes past midnight a police constable observed the respondent looking at the back of premises called Jopling's Stores. The constable followed the respondent round the premises, and lost sight of him, but soon afterwards he found the respondent on some scaffolding which would have enabled him to break into the stores, and he arrested him. The respondent made a statement in which he said that he was short of money and intended to break into the stores if he could. The justices were advised by their clerk that the suspicion which made the respondent a suspected person must be suspicion arising from acts antecedent to the act occasioning the arrest, and that the antecedent acts must be of a character that brought the respondent into the category of a suspected person. They found that the acts of the respondent at the rear of the premises were not of such a nature as to bring him within the category of a suspected person, and dismissed the information. The police officer appealed.

Held, that the justices had been correctly advised on the law, and, as there was evidence to support their finding of fact, the appeal must be dismissed.

Counsel: *Lawton* for the appellant; *Swanwick* for the respondent.

Solicitors: *Ward, Bowie & Co.*, for *Richard Reed*, Sunderland; *Taylor, Jelf & Co.*, for *Hutton, Quenet & Funnell*, Sunderland.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

THOMAS v. LINDOP

April 19, 1950

Licensing—Consumption of liquor outside permitted hours—Supply before closing time—Consumption by customer after closing time—Charge of aiding and abetting against licensee—No knowledge or connivance on part of licensee—Aiding and abetting—Licensing Act, 1921 (11 *and* 12 *Geo.* 5, *c.* 42), *s.* 4.

CASE STATED by Cheshire justices.

An information was preferred at a court of summary jurisdiction by the respondent, Bernard Lindop, a police officer, charging the appellant, Alice Thomas, the licensee of certain licensed premises, that she, at the hour of 10.25 *p.m.*, that being a time not during the permitted hours, unlawfully did aid, abet, counsel and procure one Philip Thomas Broster to consume intoxicating liquor on the licensed premises, contrary to s. 4 of the Licensing Act, 1921, and s. 5 of the Summary Jurisdiction Act, 1848. A second information charged the appellant with a similar offence in respect of one Elizabeth Mason. The police entered the premises at 10.25 *p.m.* and found Broster and Mason sitting at a table on which was intoxicating liquor. Broster was about to consume his liquor, and Mason had already consumed some of hers. When the police entered the premises the respondent was in the bar, washing glasses, assisted by a servant. The drinks which were on the table had been served by the servant before 10 *p.m.* (closing time). The appellant did not know when the drinks were served, and the respondent was satisfied that she had no knowledge that there were any drinks in the room or that the persons in question were consuming intoxicating liquor. "Time" had been called by the appellant at 10 *p.m.* and those persons had heard her. The justices convicted and fined the appellant, who appealed.

By s. 4 of the Licensing Act, 1921, "Subject to the provisions of this Part of this Act, no person shall, except during the permitted hours: (*a*) either by himself, or by any servant or agent, sell or supply to any person in any licensed premises . . . any intoxicating liquor to be consumed either on or off the premises; or (*b*) consume in or take from any such premises . . . any intoxicating liquor."

Held, that it was necessary for the prosecution to prove, in order to establish the charge of aiding and abetting, that the appellant either knew what was being done or connived at what was being done, and, in view of the findings of the justices, they should have dismissed the informations. The appeal must, therefore, be allowed.

Counsel: *H. C. Rose* for the appellant; *Stuart Horner* for the respondent.

Solicitors: *Hatchett Jones & Co.*, for *Poole, Alcock & Co.*, Sandbach; *Gregory, Rowcliffe & Co.*, for *Geoffrey Scrimgeour*, Chester.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

HALL v. ARNOLD & OTHERS

April 20, 1950

Friendly Society—Officer—Complaint—Refusal to pay over money and deliver property to named persons—Decision of justices final—No power to state Case—Friendly Societies Act, 1896 (59 *and* 60 *Vict.*, *c.* 25), *s.* 55 (1), (2).

CASE STATED by Surrey justices.

At a court of summary jurisdiction at Sutton, a complaint was preferred by the respondents, Fraser Arnold and others, the trustees of a branch of the Independent Order of Rechabites, against the appellant, Martha Ellis Hall, for that she, being the secretary of a sub-branch of the order and being an officer thereof having receipt or charge of money, had refused to pay over all sums of money and deliver all property of the society in her hands or custody pursuant to a notice in writing on their behalf, contrary to s. 55 (2) of the Friendly Societies Act, 1896.

The justices made an order against the appellant for payment of the sums of money and delivery of the property referred to within seven days. They were then asked by the appellant to state a Case, and they agreed to do so, but, on the hearing of the Case, objection was taken on behalf of the respondents that the justices had no power to state a Case by reason of the provisions of s. 55 (2) of the Act of 1896, which provides: "In case of any neglect or refusal to deliver the account, or to pay over the sums of money or to deliver the property . . . the trustees or authorized officers of the society or branch may sue upon the bond or security . . . or may apply to the county court or to a court of summary jurisdiction, and the order of either such court shall be conclusive."

Held, that proceedings by Case Stated were an appeal against the decision of the justices, and that, by reason of the provisions of s. 55 (2), the Divisional Court had no jurisdiction to entertain an appeal. The appeal must, therefore, be dismissed.

Counsel: *W. Gumbel* for the appellant; *Curtis-Raleigh* for the respondents.

Solicitors: *Wilkinson, Bowen, Haslip & Jackson*; *Charlton Hubbard & Co.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

ROBERTS v. WYNN

April 20, 1950

Agriculture—Agricultural worker—Minimum wage—Purpose of trade or business—Market garden—Agricultural Wages Act, 1948 (11 *and* 12 *Geo.* 6, *c.* 47), *s.* 17.

CASE STATED by Merionethshire justices.

At a court of summary jurisdiction informations were preferred by the appellant, Elis Wyn Roberts, on behalf of the Minister of Agriculture and Fisheries, charging the respondent, Robert Vaughan Wynn, with failing to pay the minimum wage prescribed by regulations made under the Agricultural Wages Act, 1948, to agricultural workers.

By s. 17 (1) of the Act, "agriculture" includes "the production of any consumable produce which is grown for sale or for consumption or other use for the purposes of a trade or business or of any other undertaking (whether carried on for profit or not), and the use of land as grazing, meadow or pasture land or orchard or osier land or woodland or for market gardens or nursery grounds."

The justices found that part of the grounds of the respondent's residence consisted of a garden of three and a half acres in which were eight greenhouses. About two-thirds of the garden was used for the cultivation of vegetables and the remaining one-third for the cultivation of trees, flowers and other plants. In respect of the garden the respondent claimed in each year subsidies for lime and potatoes. The respondent employed two or three gardeners. At all material times the whole of the produce of the garden, apart from an amount of flowers which was given weekly as decoration for the local church, was either sold to the public or was supplied to the respondent for use in his household. The produce which was sold was sold either to purchasers at the garden or to a local school or to shops in Nevin and Pwllheli. The produce which was sold to shops was sold at wholesale prices, the remainder being sold at retail prices. The produce which was supplied to the respondent was debited to him at wholesale prices in the case of large quantities supplied at one time and at retail prices in the case of small quantities supplied at one time. Retail prices were approximately one-fifth or one-sixth higher than wholesale prices. In the year ending September 30, 1948, produce of the value of £528 6*s.* 6*d.* (estimated as aforesaid) was sold to the public and produce of the value of £133 was supplied to the respondent. The

respondent had told his head gardener that, unless the sales of produce for the garden increased, the garden would have to be closed, and that the gardener was not to study the respondent in connexion with the garden but was to study the pounds, shillings and pence.

The justices were of opinion that the workers concerned were not employed in agriculture as defined by the Act and dismissed the informations. The appellant appealed.

Held, that the respondent was conducting the garden as a business concern, and, further, that the land in question was being used as a market garden, and the workers were employed in "agriculture" as defined in s. 17 of the Act. The appeal must, therefore, be allowed and the Case remitted to the justices with the intimation that the offences were proved.

Counsel: *E. D. Sutcliffe* for the appellant; *Elwyn Jones* for the respondent.

Solicitors: *Solicitor to the Ministry of Agriculture and Fisheries; Patersons, Snow & Co.*, for *Longueville & Co.*, Oswestry.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PRACTICE POINT

April 19, 1950

Case Stated—Findings and not evidence to be set out—Exception to general rule.

On the hearing of an appeal by Case Stated, the court commented on the form of the Case and said that it was the duty of justices, in stating a Case, to state what facts were found by the justices and not what was the evidence which was given before them. To that rule there was one exception only. Where objection was taken that there was no evidence before the justices to support their decision and the Case was submitted for the opinion of the court on the question whether there was any such evidence, it was the duty of the justices to set out the evidence that was given and to inform the court what decision they had arrived at on that evidence.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

LOCAL GOVERNMENT LEGAL SOCIETY

Provincial Meeting

The first provincial meeting of the Society will be held at Liverpool on Saturday, May 20, 1950.

Sir Robert Adcock, C.B.E., clerk of the Lancashire County Council has kindly agreed to address the Society at the meeting. Members will be welcomed by the Lord Mayor of Liverpool, Alderman J. J. Cleary, and will be the guests of the Liverpool Corporation at lunch at the Exchange Hotel, when the Lord Mayor will again be present. During the afternoon an inspection will be made of the Mersey Tunnel which is a joint undertaking by the Corporations of Liverpool and Birkenhead.

Members or associate members of the Society who are able to attend should apply at once to the organizing secretary, Mr. S. Holmes, assistant town clerk, Municipal Buildings, Dale Street, Liverpool 2, in any case not later than May 13. Members requiring hotel accommodation should indicate their requirements to Mr. Holmes.

COUNTY RECORDS

The report of the County Records Joint Committee adopted by the Oxfordshire Quarter Sessions on April 4 recommended that £500 should be subscribed by the county council to the Oxfordshire Victoria County History Committee for the financial year 1950-51.

SWEDISH VISIT TO OXFORD

A party of Swedish visitors, who are attending a conference in Oxford, were welcomed at a meeting of the Oxford City Council on April 3. One of the number was a councillor of Helsingborg, and the Council of Oxford asked that their good wishes might be conveyed to the Council of Helsingborg. The visitors, who had taken seats in the public gallery, were invited to occupy chairs in the Council Chamber itself.

CHIPPING NORTON TOWN HALL

Chipping Norton (Oxon) Chamber of Commerce have decided to make an immediate donation of £25 to the Town Hall Restoration Fund. (Chipping Norton Town Hall was recently destroyed by fire.) The decision was reached after a discussion during which Councillor H. G. Lord, who presided, said that the sub-committee arranging the Trade Week this summer had recommended that all profits should be given to the fund. A target figure has been suggested to the Borough Council but the council is unable to quote a definite figure until the amount of money available from the insurance is known. Proposals for the Trade Week to be opened on July 8 were discussed, but the plans are still sketchy owing to the loss of the Town Hall.

CORRESPONDENCE

[The Editor of the *Justice of the Peace and Local Government Review* invites correspondence on any subject dealt with in its columns, for example, magisterial matters, probation, local government, etc.]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

A NEW WAY WITH OLD OFFENDERS

I was very interested in your article under the above head at p. 163 *ante*.

The remarks of two prisoners sentenced to short terms of imprisonment by the local Court in the past occurred to my mind. One, a youth in his twenties who had been living rough said: "Three square meals a day and three blankets—heaven." The other, a man of about fifty with a lengthy record of minor offences, on coming out said: "Never again"; the latter had never been sent to prison before but had always paid fines.

Yours, etc.,
M. de L. WILSON.

Traill, Castleman-Smith & Wilson,
Solicitors,
Blandford, Dorset.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

TAKING PLEA FROM CHILDREN

I was interested in your reply to P.P. No. 2 at p. 118 *ante*. For some time I have taken the view that it is not sufficient to ask a child, particularly one who is about eleven years of age or under, whether or not he committed the offence charged; the charge is put to the defendant in as simple language as possible in the form of a question to which the answer is "Yes" or "No." An answer of "Yes" would not justify the entering of a plea of guilty in view of the presumption of *doli incapax*. If the answer to this question is "Yes" the defendant is then asked "Did you know that you were doing wrong?"; if the answer to this be "Yes," the court enters a plea of guilty. It has however by no means infrequently happened that very young children have answered this question "No," in which case a plea of not guilty must be entered and the full burden of proof is thrown upon the prosecution.

Yours faithfully,
K.S.W.

NEW COMMISSIONS

PEMBROKE BOROUGH

Frank Owen Sudbury, 38, Argyle Street, Pembroke Dock.

SOUTHAMPTON BOROUGH

Josiah Austin, 71, Burlesdon Road, Southampton.
Mrs. Lillian Bessie Barnard, 81, Stafford Road, Shirley, Southampton.
John Leo Bishop, Pine Haven, 225, Winchester Road, Chandler's Ford.
Sidney George Bratcher, 30, Gurney Road, Southampton.
Mrs. Kitty Elizabeth Cawte, 141A, St. James Road, Shirley, Southampton.
Richmond Rudolph Hawkins Hammond, 236, Winchester Road, Southampton.
Charles Graham Henderson, The Saffrons, 8, Blenheim Avenue, Southampton.
Mrs. Victoria Florence King, B.A., 37, Manor Farm Road, Bitterne Park, Southampton.
Hampton Long, 16, Chamberlain Road, Highfield, Southampton.
Richard Reginald Newitt, 60, Bassett Crescent West, Southampton.
Mrs. Elsie Elizabeth Wilcock, 31, Violet Road, Bassett, Southampton.
Miss Agnes Freda Young, 10, Ascupart House, Portswood Road, Southampton.

WARWICK BOROUGH

William Victor Collier, The Cottage, 19, Emscote Road, Warwick.
Dr. James Andrew Knott, Westbury, Warwick.
Charis Harrison Martin Miller, 44, Bridge End, Warwick.
Archibald Wallace Payne, 74, Cape Road, Warwick.
Reginald Stanley Squires, 5, Castle Street, Warwick.
Hubert Stephen Tibbits, 15, The Butts, Warwick.

THE WEEK IN PARLIAMENT

By Our Parliamentary Correspondent

JUVENILE DELINQUENCY

At question time in the House of Commons, Mr. J. D. Profumo (Stratford) asked the Secretary of State for the Home Department how far he attributed the figures of juvenile convictions in each of the years 1945 to 1950 to overcrowded homes.

The Secretary of State for the Home Department, Mr. J. Chuter Ede, replied that the causes of juvenile delinquency were many and varied, and more than one factor might be operative in any particular case. Other things being equal, a child from a home that was not overcrowded had doubtless a better chance in life, but it was not, in his view, possible to attribute any precise amount of juvenile delinquency to a single cause such as overcrowding.

Mr. Profumo: "Is the right hon. Gentleman aware that if he looked into the reports of probation officers and of juvenile convictions he would find that a very high proportion of those convictions concerned young people coming from overcrowded homes? In view of that fact, is he prepared to recommend to the Minister of Health that an even higher figure for houses completed should be aimed at?"

Mr. Ede: "I think that overcrowding is one of the causes; it is not the only cause, nor do the people to whom the hon. Member referred put it as the principal cause."

Mr. H. Nicholls (Peterborough): "Is the right hon. Gentleman aware that magistrates, particularly in industrial areas, are very concerned about the number of juvenile crimes which arise through overcrowded houses and through parents being separated owing to overcrowding? In view of that, would he make strong representations to the Minister of Health to raise the house-building target from the very low level at which it is at present?"

Mr. Ede: "No, Sir, I am not prepared to do that."

CORONERS' COURTS

Mr. A. Marlowe (Hove) asked the Secretary of State for the Home Department whether he was aware of the urgent need to introduce legislation to amend the law relating to coroners' courts; what steps he had taken consequent upon his undertaking of February 5, 1948, to look into that question; and whether it was intended to implement any of the recommendations on that subject contained in the report of the Lord Wright Committee made in 1935.

Mr. Ede replied that most of the recommendations of the Departmental Committee on Coroners could be implemented only by legislation. Although he had not overlooked the desirability of reviewing the law relating to coroners, he could not promise to introduce legislation on that difficult and controversial question in the near future.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, April 25

PUBLIC UTILITIES STREET WORKS BILL, read 1a.

Wednesday, April 26

HIGH COURT AND COUNTY COURT JUDGES BILL, read 3a.

ARMY AND AIR FORCE (ANNUAL) BILL, read 3a.

HOUSE OF COMMONS

Tuesday, April 25

COAL-MINING (SUBSIDENCE) BILL, read 2a.

Friday, April 28

ROYAL PATRIOTIC FUND CORPORATION BILL, read 2a.

NEWFOUNDLAND (CONSEQUENTIAL PROVISIONS) BILL (Lords) read 2a.

MERCHANT SHIPPING BILL, read 2a.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 30.

AN IMPATIENT HOLIDAY MAKER

A man appeared before the Penzance justices on April 5, 1950, upon a complaint brought under the Justices of the Peace Act, 1360, with having on a stated date at St. Mary's, Isles of Scilly, cast off two five-inch ropes attached between the pier and *R.M.S. Scillonian*, an act calculated to provoke a breach of the peace.

For the prosecution it was stated that on February 11, the *Scillonian* (a vessel that carries traffic between Penzance and the Isles of Scilly) was moored alongside a quay at St. Mary's, and during the evening the weather became very bad. A westerly gale was blowing and as the ship was heaving at her moorings in the rough seas it was considered necessary to use extra heavy mooring gear, and a fifteen-inch hawser and two five-inch ropes were put at the stern, and one fifteen-inch hawser and one five-inch bow rope and one ten-inch back spring and one five-inch breast rope were put forward.

Twelve members of the crew slept aboard that night and between 11 and 11.30 in the evening the chief officer inspected the moorings, which appeared to be in order. The following morning it was discovered early that a bow and stern five-inch rope had been lifted off from the shore moorings, and were hanging loose, and another rope had also been cast off.

The defendant, a resident of Penzance, who had been trying to leave the Scilly Isles for two or three days after a short visit there, was interviewed by the police and in a statement he said that he was very upset because the steamer had not sailed. He admitted that, after having had a few drinks, it entered his head that if he released two or three ropes the ship might sail for Penzance that night and that he would be able to go with her. He denied that he had cast off the ropes with the intention of trying to wreck the ship or cause her any damage.

The defendant, who pleaded guilty, attributed his action to drunkenness and was bound over for a year.

COMMENT

It is understood that the prosecution could find no other charge which could be brought against the accused and that in view of the serious nature of the offence, which had involved risk to the twelve men sleeping on board, it was felt that the matter could not be overlooked.

It is noteworthy that an act such as that described above does not appear to infringe directly any statute, although clearly the act complained of might well have had grave consequences.

It is stated in *Stone* that legal authorities are not agreed as to all of the offences for which a surety for good behaviour may be required and it is, of course, well known that the most usual circumstances under which the provisions of this ancient Act are invoked are cases where persons peer through windows. *Stone* comments that it is difficult to define how the statute may properly be extended and advises that justices cannot exercise too much caution in the matter.

A curious feature of the case was that all the justices acting for the Isles were disqualified as being either directors of the steamship company, or owners of the steamer in question, or being skipper of the steamer, and in these circumstances it was decided to bring the case before justices acting for Cornwall.

Owing to the fact that s. 8 of the Justices of the Peace Act, 1949, has not yet come into force, the justices decided not to fly to the Isles but to sit at Penzance. It is understood that they took the view that they were entitled to do this by virtue of the provisions of s. 8 of the Summary Jurisdiction Act, 1884, which, it will be remembered, provides that (*inter alia*) an occasional court house for the use of the justices of any county may be outside the limits of the petty sessional division for which such court house is provided . . . and may be . . . in any adjoining county or borough. In view of the fact that forty miles of sea separate the Isles of Scilly from Penzance, it is perhaps arguable whether Penzance may be said to "adjoin" the Isles of Scilly.

(The writer is greatly indebted to Mr. J. W. F. Bennett, clerk to the justices for the Petty Sessional Division of the Isles of Scilly, for information in regard to this case.) R.L.H.

No. 31

A DISHONEST TRADER

At East Ham Magistrates' Court on April 4, 1950, a woman appeared charged with unlawfully and wilfully committing a fraud in using a weighing machine with a metal nut placed under the scoop, contrary to s. 26 of the Weights and Measures Act, 1878.

For the prosecution it was stated that an assistant to the inspector of weights and measures for the county borough of East Ham made a purchase of sweets in the defendant's shop and while the defendant was weighing the sweets he noticed that the indicator on the machine showed that it was against the customer to the amount of four drams and he in fact received short weight to that amount.

On inspection, it was found that the prongs upon which the scoop rested had been raised and that there was a metal nut weighing four drams under it.

The defendant, who pleaded not guilty, gave evidence that she had no knowledge that the nut was under the scoop and that it must have fallen there.

It was argued by a solicitor on behalf of the defendant that no fraud was committed, inasmuch as the inspector's assistant who made the purchase noticed that the indicator was against the customer and that therefore he was not deceived, and he cited *Harris* v. *Allwood* (1893) 57 J.P. 7 and *King* v. *Spencer* (1904) 68 J.P. 530.

The learned stipendiary magistrate, Mr. J. P. Eddy, K.C., said he had no doubt that the defendant placed the metal nut under the scoop or that to her knowledge it had been placed there. In his judgment, on the facts in this case, it was immaterial whether the purchaser was deceived or not. A fraud was in fact committed by the defendant in the use of the machine. He therefore convicted the defendant and imposed a fine of £5.

COMMENT

Section 26 of the Weights and Measures Act, 1878, is a good illustration of the way in which this aged Act has been amended during the years which have passed since it became effective, for originally it was provided that a first offender should be liable to a fine not exceeding £5 and in the case of a second offence the maximum penalty was £10.

In 1889, it was provided by s. 3 of the Weights and Measures Act of that year that the maximum penalty for a second offence under s. 26 should be £20 and by s. 4 that a person convicted for a second time under any section of the Acts of 1878 or 1889 in circumstances in which the court was satisfied there was an element of fraud, should be liable, in addition, to two months' hard labour.

In 1904, it was provided by s. 13 of the Weights and Measures Act of that year that a penalty of imprisonment might be imposed in any case where fraud was proved, and that it was unnecessary to wait for an offender to deceive the public twice before imposing imprisonment.

The two cases cited by the defence were, it will be remembered, both cases where articles of food were wrapped up in paper and it may be thought that such cases may clearly be differentiated from the case outlined above.

Both these cases were considered by the Divisional Court in *Stone* v. *Tyler* (1905) 69 J.P. 4, in which case Lord Alverstone, C.J., said that he was satisfied that the practice of selling articles and paper together often inflicts upon the ordinary poor purchaser considerable injustice, but he pointed out that it was a matter with which the legislature must deal, and he added that the court was not justified in straining the language of an Act of Parliament.

(The writer is greatly indebted to Mr. G. A. Parkin, clerk to the East Ham justices, for information in regard to this case.) R.L.H.

PENALTIES

Brierley Hill—March, 1950—having a front number plate on a motor coach not easily distinguishable—fined 20*s*.

Gloucestershire Quarter Sessions—March, 1950—obtaining money by false pretences—eighteen months' imprisonment. Defendant, a woman of forty-nine, represented that she was entitled to £500 from her mother's estate. In fact the defendant's share was £16. Defendant asked for eight other offences to be taken into consideration and had a number of previous convictions for similar offences.

Oldbury Juvenile Court—March, 1950—stealing 3*s*. 3½*d*. (two defendants)—(1) sent to a remand home until a place could be found at an approved school—(2) twelve months' probation and to pay 15*s*. costs. Both boys asked for other cases to be taken into consideration, one of stealing £2 10*s*. and another of £5. The first defendant, the younger boy, was already on probation.

Salisbury—March, 1950—drunk and disorderly (two defendants)—each fined £2. The defendants, men of twenty-eight and twenty-seven, fought so hard in the street just before midnight that they both had to receive treatment at an infirmary for their facial injuries.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Betting and Lotteries—*Football match—Draw for prizes by numbered programmes.*

A football club sells to the spectators programmes on which are printed numbers. Duplicates of these numbers are then drawn by the club officials and the holders of the programmes whose numbers are drawn receive prizes, *viz.*, cash and theatre tickets. The police contend that this scheme constitutes a lottery and, as such, is illegal. It would appear, however, that the Betting and Lotteries Act, 1934, s. 23, provides that small lotteries incidental to certain entertainments, examples being bazaars, sales of work, fetes and other entertainments, "of a similar character" are not illegal provided that certain other conditions are fulfilled. Again, it is stated at 15 *Halsbury* 526, that when the chances of a prize are obtained wholly gratuitously, the scheme will not constitute a lottery, the authority being *Willis* v. *Young Stembridge* [1907] 1 K.B. 448. On the other hand, it is stated at 15 *Halsbury* 525 and 526 that the fact that the persons taking part in the scheme in any event obtain some or even full value for their subscription will not prevent the scheme from being a lottery.

I shall be pleased to have your opinion as to :—

1. Whether a football match can attract the protection of the Betting and Lotteries Act, 1934, s. 23 (3).

2. Whether the inducement to buy the programmes is sufficient to bring the scheme within the definition of a lottery.

3. Whether in your opinion the scheme is a lottery and, therefore, illegal. S.B.C.

Answer.

We dealt with a similar point at 112 J.P.N. 800. We do not consider that a football match is an entertainment to which the protection of s. 23 of the Betting and Lotteries Act, 1934, applies. Our answers are, therefore—in our opinion :—

1. No.
2. Yes.
3. Yes.

2.—Burials—*Selected grave space not formally reserved—Erroneous use for stranger—Liability of council.*

B is a parish council and the burial authority for the parish under the Burial Acts. The scale of fees provides for a fee of £1 6*s.* to be paid for "the exclusive right of burial in perpetuity in a grave eight feet by four feet." The interment fees are 4*s.* in ground selected by the burial authority, and 9*s.* in ground selected by the purchaser. No grave spaces have been purchased and the fee of £1 6*s.* paid, but persons select a grave space, and pay a fee of 5*s.* for which a plain receipt is given. This 5*s.* is the difference between the 4*s.* and 9*s.* mentioned above, and the space is then reserved for the selector. Nothing in the nature of a deed or conveyance is given to the selector, as is given by some burial authorities when the exclusive right of burial is acquired. Through an oversight of the burial clerk, a stranger has been buried in a space selected by X, who now objects to the burial in that space. What is the position of the parish council, and how should the mistake be remedied ? A.B.A.P.

Answer.

The mistake cannot be remedied ; that is to say, the aggrieved person cannot have the intruder exhumed. The position of the parish council is, at worst, that they have committed a breach of contract if the selector has not got what he paid for. This last is, however, not clear. The 9*s.* is said to be the price of an interment in a selected space. If the interment so paid for took place before the wrong corpse was buried, *i.e.*, if the latter was a second burial in the selected space, the selector had what he paid for when the first corpse was buried, and has suffered no measurable damage (whatever his sentimental damage). If, on the other hand, the intruder corpse was the first, *i.e.*, if the selector had paid his 5*s.* in advance, so as to secure the grave space he fancied, for use at a charge of 4*s.* when he was (or his executors were) ready to use it, then he has suffered damage to the extent of the fee he paid, and the parish council should refund that fee

3.—Licensing—*Entry of conviction in register of licences—Whether entry should be made of "absolute discharge" under Criminal Justice Act, 1948, s. 7.*

In a case where the holder of a justices' licence is convicted of an offence within the meaning of s. 50 (2) of the Licensing (Consolidation) Act, 1910, and the court makes an order of absolute discharge, should an entry be made in the licensing register in accordance with the foregoing subsection ?

This appears to me to be dependent upon the interpretation placed upon the words "other than the purposes of the proceedings in which the order is made" in s. 12 (1) of the Criminal Justice Act, 1948.

The reply in P.P. No. 10 at 113 J.P.N. 548 would appear to have a bearing on the case. N.H.C.

Answer.

We are in no doubt that s. 50 (2) of the Licensing (Consolidation) Act, 1910, requires that a conviction followed by an order for absolute or conditional discharge under s. 7 of the Criminal Justice Act, 1948, shall be entered in the register of licences. We can read nothing into subss. (1) or (2) of s. 12 of the Criminal Justice Act, 1948, which suggests that the section is designed to apply in such a case.

4.—Guardianship of Infants Act, 1925, s. 7 (3)—*Appeal to the Chancery Division—Duty of clerk.*

On December 19, 1949, a wife applied for a separation order and a separate order for the custody and maintenance of the child of the marriage ; both applications were refused. I have this week received a notice of appeal from the wife's solicitors, "that the order of dismissal under the above Act be rescinded and that the appellant do have the custody of her child." I have received no notice of appeal against the refusal to make a separation and maintenance order in respect of the wife.

This is my first case of appeal of this nature, and I have been unable to find what my duties in the matter are, and as I have in my custody vital letters which were produced to the court, your advice as to my duties will be greatly appreciated. Sia.

Answer.

We do not think the clerk has any duty in connexion with such an appeal, except, of course, to supply copies of notes he has taken, and of any reasons given by the justices, if these are required by the court or the parties. If the party who put in documents requires them for production to the court, they should be produced.

If either party asks for a copy of the order of dismissal for the purposes of the appeal it should be furnished.

5.—Magistrates—*Practice and procedure—Plea of guilty—Whether witness need be called.*

I shall be most obliged for your valued opinion on the following point.

Before the hearing of a charge of careless driving, the defendant through his solicitor informs the police he shall plead guilty and asks for the attendance of witnesses for the prosecution to be cancelled so as to save expense. This the police do. At the hearing the police superintendent outlines the case and defendant's solicitor accepts his statement and pleads guilty. The magistrates, however, are not satisfied. Their chairman says they would have preferred sufficient evidence to have been given by the witnesses to establish a *prima facie* case : that they would then have been in a better position to judge the gravity of the offence, and might have varied the fine, ordered absolute discharge, or even perhaps have dismissed the case. The police and defendant's solicitor explain that to have brought the essential witnesses would have entailed a cost of at least £5 and the witnesses losing work. The magistrates realized that to bring witnesses in all cases might cause unnecessary hardship both to themselves and the defendant, but on the other hand they were reluctant to entrust the police with the power of deciding when witnesses should be called and when not. They informed the police they would get further advice and give a ruling later. Apart from the police point of view and even that of the court, it would appear that by suppressing the evidence in this way, the defendant would gain an advantage if civil proceedings were pending, as the notes of the evidence in the magistrates' court would not then be available to the plaintiffs, who very often ask for them. This, however, is perhaps beside the point. Silex.

Answer.

Generally, we agree, it cannot be left to the police to dispense with the attendance of the witnesses. It seems to us that here, as in many matters, a middle course can safely be adopted. If a solicitor notifies the police that there is to be a plea of guilty and that the facts alleged by the police are not in any way to be disputed, it is a pity to bring a number of witnesses. It may be possible to choose one or two witnesses who can really give the whole story if required. We think this would generally be satisfactory. If the police are legally

represented, the facts, as stated by counsel or solicitor, and not disputed by the defence, should be sufficient material upon which the justices can act. If this turns out not to be so, an adjournment can be granted for the attendance of witnesses. Such a situation is not likely to arise if the police are legally represented.

We do not think the possibility of subsequent civil proceedings need enter into consideration in this connexion.

While we sympathize with the desire to save expense and to spare witnesses from inconvenience, we feel that these considerations must give way when necessary to considerations of the due administration of justice.

6.—Rating and Valuation—*Liability for rates—Wife occupying house owned by husband after separation.*

A husband and wife lived in a dwelling-house which was the property of the husband's mother and, until the husband was called up for service in the forces during the recent war, he was treated as the occupier of the house, and paid promptly the rates levied. Since the husband joined the services, domestic troubles have arisen, but the wife has been allowed to remain and has continued to reside in the dwelling-house. Consequently, difficulties have been experienced in obtaining the payment of rates, the husband contending that his wife was liable, as he no longer resided in the dwelling-house, and the wife on the other hand contending that, as her husband had every opportunity and was at liberty to return to the home, he was liable. The rates have been paid, however, to March 31, 1948, though on most occasions they were paid by the husband's mother, who as stated above was the owner of the property, and informed the authority that she was paying the rates on behalf of her son. Since the last payment was made, the husband's mother has died, and more recently the wife has obtained a legal separation from her husband, who it is understood has accepted extended service with the forces and is now serving on the continent; neither the husband nor the wife will accept liability for rates now due in respect of the property. No detailed information of the terms of the separation are known to the rating authority, but the wife continues to live in the dwelling-house, which it is known is now the property of the husband, and the wife has informed an official of the authority recently that the furniture in the house is her property. It would be appreciated, therefore, if you could advise on the following points, *viz* :—

1. In the circumstances now obtaining and from the information available, is there any reason why the wife should not be liable to pay rates in respect of the property? It would be appreciated if you could refer me to any express decision or statutory authority on the point.

2. If the reply to (1) above is in the affirmative, should the husband be rated or should the husband and wife be rated jointly?

3. If the husband is to be rated, what action for recovery of the rates can be taken against him? If the wife's statement as to the ownership of the furniture is correct, I have no knowledge of any distrainable goods which he possesses in this country. A. Es.

Answer.

This looks collusive. Since we are told there has been a "legal separation," but its terms are not ascertainable, we imagine it exists in some written form, and the question of the wife's continuing to reside in the husband's house can hardly have been passed over in silence. There were innumerable wartime cases where a soldier husband failed to pay rates due from him as occupier, and the difficulty usually was that he owned the furniture, or much of it, and had *animus revertendi*, so that his absence on duty did not prevent his still occupying: *Animus revertendi* (to a house where the husband has no furniture and where there is living a wife from whom he has formally separated) cannot here be inferred; indeed, the contrary is the natural inference. The wife's position therefore is that of a licensee from the owner. Occupation for rating purposes is, as we have said so often, a matter of fact and does not depend on title.

1. In our opinion, the resident licensee is in fact occupying and the council should proceed accordingly, thus throwing upon her the burden of disputing her occupancy if she can. The text books contain much upon this point, but perhaps the clearest authority is the passage which speaks of "paramount occupation" in Lord Russell's speech in *Westminster Corporation* v. *Southern Railway Co.* [1936] 2 All E.R. 322; 100 J.P. 327.

2. The woman alone. It is in some cases possible to say that an occupier occupies through another person, but we see no purpose here in saying this, which does not accord with the facts before us.

3. Does not arise.

7.—Seashore—*Pleasure boats plying for hire—Touting.*

By conveyance, the council owns that portion of the beach down to high water mark and by lease from the Board of Trade has control of the portion of foreshore between high and low water mark. Part X of the Public Health Acts Amendment Act, 1907, is in force in this urban district and the council licenses pleasure boats under s. 94 of that Act and s. 172 of the Public Health Act, 1875. There are no pleasure boat byelaws in force in the urban district, the council relying on its general powers and the conditions of pleasure boat licences. The council is desirous of allocating specific portions of the beach from which pleasure boats may ply for hire, and allocating sites on the beach or promenade from which bookings may be made for pleasure boat trips. The council desires to make a charge for these latter sites. If sites can be allocated, the council feels that in this way touting could be confined to such sites. At present, boats ply for hire from any portion of the beach and touting takes place over a wide area. Pleasure boatmen have plied for hire from all parts of the beach for many years—motor boats since 1920, and rowing boats for many years before 1920. No charge has been imposed by the council other than the licence fee. There are no byelaws in force under s. 172 of the Public Health Act, 1875, regulating, *inter alia*, mooring places.

Has the council power :—

1. To include in pleasure boat licences and pleasure boatmen's licences a condition restricting the plying for hire to certain portions of the seashore or would this conflict with the rights of navigation, anchoring, mooring, or landing, acquired by usage?

2. If by a condition in licences sites are allocated on the beach or promenade from which the booking of trips can take place, can the boatmen be forced to use such sites and pay a rent for them? Ass.

Answer.

In P.P. 6 at 110 J.P.N. 434 and P.P. 14 at 112 J.P.N. 284 we dealt with some underlying principles. Those principles, which are part of the historic common law, do not extend to giving a navigator a right of touting for passengers on other people's land, and where s. 94 of the Act of 1907 is in force he cannot navigate in the manner to which that section refers without a licence thereunder. The section is not explicit about the sort of conditions it authorizes, but what the council propose is, with one exception, directed to the exercising in an orderly and convenient manner of the public rights of embarking and disembarking, and we think, therefore, that it is *intra vires* of conditions under the section. The exception is imposing charges for the use of mooring places.

8.—Tort—*Limitation Act*, 1939, *s.* 21—*Continuing neglect or default.*

X is employed as a teacher at evening classes by an education authority. He falls over an unlighted object in the school playground one dark evening, and sustains injuries.

More than a year later, when the injuries have healed, X wishes to commence an action for damages. The object is still in position in the playground and is still unlighted.

1. Does the unlighted object constitute a "continuing" act, neglect or default within the meaning of the proviso to s. 21 (1) of the Limitation Act, 1939? If so, it is assumed that a claim alleging nuisance and/or negligence would not be barred.

2. Alternatively, would it be possible to sue in contract, alleging an implied term in the contract of employment to the effect that the premises are safe? A. P. & W.

Answer.

We have examined a number of cases where "continuance" has been alleged in various contexts, and we find some difficulty in saying that a physical object which on one occasion injured the plaintiff, but is no longer doing so, "continues" because it might injure other people. There seems a logical distinction between this and (for example) sewage flowing over the plaintiff's land, as in *Hole* v. *Chard Union* (1894) 70 L.T. 52. But whereas in that case the relevant provision spoke of a "continuing cause of action," the section here speaks of a "continuing act, neglect, or default." It may very well be, although we do not find that the exact point has been decided, that a neglect or default which has not been remedied may be deemed to prevent the period from running against the plaintiff even though he is no longer affected by it, this difference from the result in cases under the old law being the result of changing the words which speak of continuance. With some hesitation, therefore, we think an action might succeed, though we doubt whether this is what the section intended.

We do not think the action can be made to sound in contract, so as to escape s. 21 of the Act of 1939: cf. *Sharpington* v. *Fulham Guardians* (1904) 68 J.P. 510; *Bradford Corporation* v. *Myers* (1916) 80 J.P. 121. Here again, we have examined many cases to be found in 38 *E. & E. Digest*, on the subject of an employer's liability in respect of unsafe premises, in some of which the employer has been cast in damages, but we do not find that upon any facts parallel to those before us damages have been awarded for breach of the implied term in the contract here suggested.

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (*contd.*)

MIDDLESEX COMBINED PROBATION AREA

Appointment of Female Probation Officers

APPLICATIONS are invited from serving Probation Officers for the appointment of Female Probation Officers. Salary according to the Probation Rules, 1949, including £30 London Weighting, and subject to superannuation deductions. The successful applicants may be required to pass a medical examination.

Application forms from the Principal Probation Officer, 25, Victoria Street (South Block), Westminster, S.W.1, to be returned to the undersigned within seven days of the publication of this advertisement (quoting G.937 J.P.).

Canvassing disqualifies.

C. W. RADCLIFFE,
Clerk to the County Probation Committee.

Guildhall,
Westminster, S.W.1.

BOROUGH OF NELSON

Appointment of Assistant Solicitor

APPLICATIONS are invited for the position of Assistant Solicitor at a salary in accordance with Grade Va of the National Scales of Salaries (£550, rising by annual increments of £20 to £610 per annum).

Applicants must have experience in conveyancing and advocacy. Local Government experience is not essential.

The appointment will be subject to the provisions of the Local Government Superannuation Act, 1937; the National Scheme of Conditions of Service and termination by one month's notice. The selected candidate will be required to pass a medical examination.

Applications, stating age, qualifications and experience, accompanied by copies of not more than two recent testimonials, must be delivered to the undersigned not later than May 13, 1950.

F. W. ROBERTS,
Town Clerk.

Town Hall,
Nelson.
May 5, 1950.

CITY OF PORTSMOUTH

Appointment of Full-time Male Probation Officer

APPLICATIONS are invited for the appointment of a full-time male Probation Officer for the City of Portsmouth.

The appointment will be subject to the Probation Rules, 1949, and applicants must be not less than 23 and not more than 40 years of age (except as provided by Rule 44). The salary will be as provided by the Rules subject to deductions for superannuation. The successful applicant will be required to pass a medical examination.

Applications, upon a form which can be obtained from this office upon the receipt of a stamped addressed envelope, must be forwarded to reach me not later than May 15, 1950.

F. W. ANDREWS,
Secretary to the Probation Committee.

Magistrates' Clerk's Office,
17 and 18, Western Parade,
Southsea, Portsmouth.

CITY OF LEICESTER

Appointment of Full-time Male Probation Officer

APPLICATIONS are invited for the appointment of a full-time male probation officer.

The appointment will be subject to the Probation Rules, and the salary will be in accordance with the scale provided under those Rules.

Applications, stating age, qualifications, experience and present salary (if already serving), and accompanied by not more than three recent testimonials, must reach the undersigned not later than Thursday, May 25, 1950.

W. E. BLAKE CARN,
Secretary to the City Probation Committee.

Town Hall,
Leicester.

BOROUGH OF LOWESTOFT

Appointment of Assistant Solicitor

APPLICATIONS are invited from Solicitors for the appointment of Assistant Solicitor in the Town Clerk's Department at a salary in accordance with A.P.T. Grade Va of the National Joint Council's Scales of Salaries commencing at £550 per annum.

Applicants must have a sound knowledge of conveyancing and should have some experience of advocacy. Previous experience in the Local Government Service will be an advantage.

The appointment will be subject to the National Joint Council's Scheme of Conditions of Service and the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination. The appointment will be subject to one month's notice on either side.

Applications endorsed "Assistant Solicitor" stating age, qualifications and experience, and accompanied by three recent testimonials, should be delivered to the undersigned not later than May 20, 1950.

Canvassing, either directly or indirectly, will be a disqualification, and applicants should disclose any relationship within their knowledge to a member or senior officer of the Council.

F. B. NUNNEY,
Town Clerk.

Town Hall,
Lowestoft.
May 1, 1950.

COUNTY OF CUMBERLAND

Appointment of Full-time Female Probation Officer

THE Cumberland Combined Probation Committee invite applications for the appointment of a full-time female Probation Officer for the Eastern Division of the Combined Probation Area which includes the County Borough of Carlisle.

The appointment will be subject to the Probation Rules, 1949, and the Probation Officers' (Superannuation) Order, 1948, and the salary will be in accordance with the prescribed scale. The selected candidate will be required to pass a medical examination.

Applicants must be serving full-time Probation Officers or Trainees under the Home Office probation training scheme.

The selected candidate may provide a motor car for which an allowance will be paid, or a car will be provided by the Committee.

Applications must be received by the undersigned not later than Monday, May 15, 1950.

G. N. C. SWIFT,
Clerk to the Combined Probation Committee.

The Courts,
Carlisle.
April 21, 1950.

LANCASHIRE (No. 11) COMBINED PROBATION AREA

Appointment of Male Probation Officer

APPLICATIONS are invited for the above appointment. Applicants must not be less than 23 years nor more than 40 years of age except in the case of whole-time serving officers.

The person appointed will be assigned to the County Borough of St. Helens.

The appointment will be subject to the Probation Rules, 1949, and the salary will be in accordance with the prescribed Scales.

The successful candidate will be required to pass a medical examination.

Applications, with copies of two recent testimonials, to be sent to the undersigned not later than May 15.

W. McCULLEY,
Clerk to the Combined Probation Area.

Town Hall,
St. Helens,
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